## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOAN BARRETT, OBO, MARTY R. BARRETT (Deceased)	
Plaintiff,	)
V.	) Case No. 13-CV-282-JED-FHM
CAROLYN W. COLVIN, Acting Commissioner of the Social Security Administration,	
Defendant.	)

## **OPINION AND ORDER**

The Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) filed by Plaintiff's counsel, [Dkt. 28] is before the court for decision. The Commissioner failed to file a response within the allotted time.

In *McGraw v. Barnhart*, 450 F.3d 493, 496 (10th Cir. 2006), the Court ruled that attorney fees are awardable under 42 U.S.C. § 406(b)(1) when the Social Security Administration awards disability benefits to a claimant following a remand from the federal court. In such a circumstance the authority of Fed. R. Civ. P. 60(b)(6) is employed to allow counsel to seek fees under §406(b)(1) long after the usual fourteen days allotted by Fed. R. Civ. P. 54(d)(2)(B)(i) for filing a motion for attorney fees has expired. *McGraw*, 450 F.3d at 505.

The court remanded this case to the Commissioner for further administrative action, pursuant to sentence four of 42 U.S.C. § 406(g). The Commissioner issued a fully favorable decision. Counsel's motion for relief under Rule 60(b)(6) was filed less than a month after the issuance of the decision. Counsel represents that, as of the date of filing

the instant motion, the Notice of Award containing the amount of past due benefits has not

been received. Consequently, the amount of the contingent attorney fee cannot be

ascertained. Counsel requests an order allowing the filing of the motion for 406(b) fees

within sixty days of receipt of the Notice of Award.

The court finds that the instant motion was filed within a reasonable time of the

decision awarding benefits and that the request for sixty days from receipt of the Notice of

Award in which to file a motion for fees under §406(b) is reasonable.

The Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) is GRANTED, as follows:

a motion for an attorney fee award under §406(b), together with the required notice to

Plaintiff and statement concerning any objection thereto, may be filed within 60 days of the

Notice of Award.

SO ORDERED this 24th day of June, 2015.

FRANK H. McCARTHY

UNITED STATES MAGISTRATE JUDGE